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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,547	09/24/2004	Michael Poindexter	1644.01	5546
21901	7590	10/28/2005	EXAMINER	
SMITH & HOPEN PA 15950 BAY VISTA DRIVE SUITE 220 CLEARWATER, FL 33760			VANATTA, AMY B	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/711,547

Applicant(s)

POINDEXTER ET AL.

Examiner

Amy B. Vanatta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11092004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 5, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Beauchamp et al (US 4,995,116).

Beauchamp et al disclose a protective garment in the form of a cape having an outer surface and an inner surface, including a back panel (16) having an upper and a lower edge, a pair of shoulder panels (18) extending from the upper edge of the back panel, and a neck opening (22) as claimed (see Figs. 1-3). The garment has two chest panels (12 and 14) each having a medial and lateral side and depending from the shoulder panels as claimed (see Figs. 1-3). There is a longitudinal opening (24) between the chest panels. Each shoulder panel has a medial end and a lateral end; the lateral end of the shoulder panel may be seen to overlie the outer edge of the wearer's shoulder (proximate the lead line from reference numeral 18 as shown in Fig. 3), and to be integrally attached to a sleeve panel, which is seen to extend downwards therefrom (see Fig. 3). Thus, the construction of the garment of Beauchamp is seen in Fig. 3 to include shoulder panels and integrally formed sleeve panels which extend from the lateral ends of the shoulder panels and from the back panel, each sleeve panel

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extending partially over the wearer's upper arm as in claim 1 (see Fig. 3). The chest panels define a generally longitudinal opening between each chest panel and the back panel, as shown in Figs. 1-3 of Beauchamp. A fastener (26) is associated with at least one of the medial sides of the chest panels as claimed. The fastener joins the chest panels together in overlapping fashion along the longitudinal opening (24). The fastener 26 is disclosed as a hook and loop fastener (col. 3, line 52) as in claim 3. Beauchamp discloses that the cape is made of light weight fabric (col. 4, line 22), including the shoulder panels, chest panels, and sleeve panels since these panels form the cape of Beauchamp. Beauchamp discloses that the cape may be made of cotton (see col. 6, line 37). Cotton is inherently absorbent. Thus, the shoulder panels, chest panels, and sleeve panels are formed of an "absorptive material" (i.e. cotton), as in claims 5-7.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Paolacci (Des. 412,388).

Paolacci discloses a protective garment in the form of a cape having an outer surface and an inner surface, including a panel (shown in Fig. 1) having an upper and a lower edge, a pair of shoulder panels extending from the upper edge of this panel, and a neck opening as claimed. The garment has two panels (shown in Fig. 2) each having a medial and lateral side and depending from the shoulder panels as claimed. The recitation of the first claimed panel as being a "back" panel and the two opposing panels as being "chest" panels amounts to the intended use of the garment to the extent that these panels cover the back and chest of the wearer when worn with the opening at the

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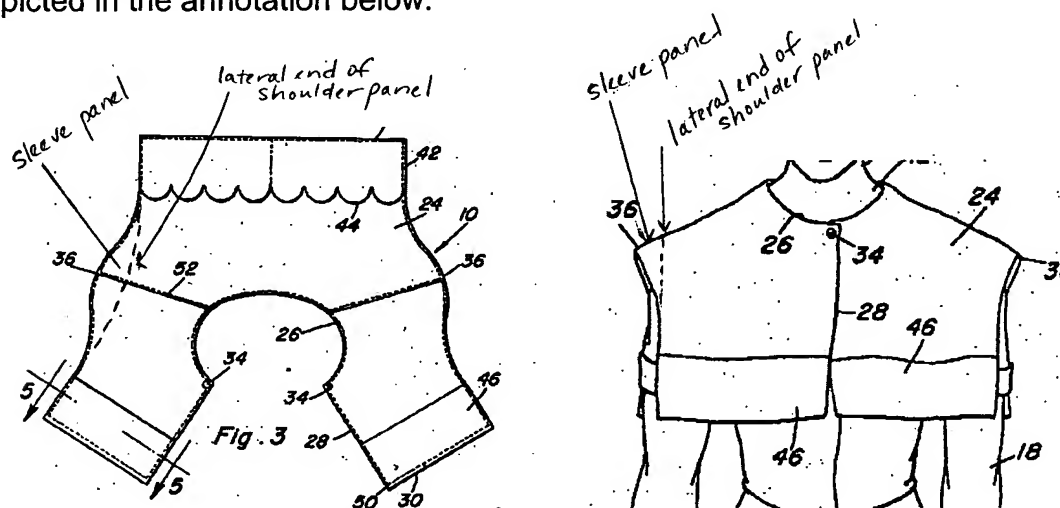
front. To this extent, the garment of Paolacci has the claimed structure since it clearly is capable of being worn with the opening facing either the front or the back of the wearer. If the opening is worn facing the front of the wearer, the panels shown in Fig. 2 form chest panels and the panel of Fig. 1 forms a back panel as claimed. Additionally, when viewed from the direction as in Fig. 2 of Paolacci, the panel furthest from the viewer forms a back panel as claimed, and the two opposed front panels form chest panels to the extent claimed. There is a longitudinal opening between these "chest" panels, as shown in Fig. 2, and longitudinal openings between each of these panels and the "back" panel, as shown in Figs. 2 and 9. Each shoulder panel has a medial end and a lateral end; the lateral end of the shoulder panel would overlie the outer edge of the wearer's shoulder when worn, and is integrally attached to a sleeve panel as shown in Fig. 2. Each sleeve panel extends over the wearer's upper arm and has an open bottom edge along most of its length (see Fig. 2), thus meeting the limitation of extending "partially over the user's upper arm" as in claim 1. A fastener (see Fig. 3) is associated with at least one of the medial sides of the "chest" panels as claimed. The fastener joins the chest panels together in overlapping fashion along the longitudinal opening.

4. Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallace (US 2,857,599).

Wallace discloses a protective garment having an outer surface and an inner surface, including a back panel (see Fig. 2) having an upper and a lower edge, a pair of shoulder panels extending from the upper edge of the back panel, each shoulder panel

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having a medial end and a lateral end (see Figs. 1-3), and a neck opening (26) as claimed. The garment has two chest panels (see Fig. 1) each having a medial and lateral side and depending from the shoulder panels as claimed. There is a generally longitudinal opening between each chest panel and the back panel (see Fig. 1). There is a longitudinal opening (28) between the chest panels; see Figs. 1 and 3. A fastener 34 is associated with at least one of the medial sides of the chest panels as claimed. The lateral end of each shoulder panel is integrally attached to a sleeve panel. That is, the lateral end of each shoulder panel is positioned at the wearer's shoulder along the line which connects the lateral edge of the chest panel to the lateral edge of back panel, as depicted in the annotation below:



The fabric which extends beyond this lateral end of the shoulder panel forms the claimed "sleeve panel". The sleeve panels extend from the lateral end of the shoulder panels and from the back panel, as seen in the figures above. Each sleeve panel extends partially over the user's upper arm, as shown in the second annotated figure above.

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The garment of Wallace has shoulder panels, chest panels, and sleeve panels made of absorptive material (terry cloth; col. 2. line 47) as in claims 5-7.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Goldenstein (Des. 130,783).

Goldenstein discloses a garment having an outer surface and an inner surface, including a back panel (see Fig. 2) having an upper and a lower edge, a pair of shoulder panels extending from the upper edge of the back panel, each shoulder panel having a medial end and a lateral end (see Figs. 1-2), and a neck opening as claimed. The garment has two chest panels (see Fig. 1) each having a medial and lateral side and depending from the shoulder panels as claimed. There is a generally longitudinal opening between each chest panel and the back panel (see Figs. 1 and 3). There is a longitudinal opening between the chest panels; see Fig. 1. A fastener (see ties shown in Figs. 1 and 3) is associated with at least one of the medial sides of the chest panels as claimed. The lateral end of each shoulder panel is integrally attached to a sleeve panel. That is, the lateral end of each shoulder panel is positioned at the wearer's shoulder and the fabric which extends beyond this lateral end of the shoulder panel forms the claimed "sleeve panel" as shown in Figs. 1-3. The sleeve panels extend from the lateral end of the shoulder panels and from the back panel, as seen in the figures of Goldenstein. Each sleeve panel is shown as sized such that it would extend partially over the user's upper arm, as claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paolacci (Des. 412,388) in view of Daniel (US 3,798,674).

Paolacci discloses a protective garment in the form of a beauty salon cape. Paolacci does not disclose of what material the cape is made. Daniel discloses a drape (10) for use in a beauty salon, and discloses that the drape may be formed out of terry cloth or other absorbent material (col. 3, lines 46-47). Daniel discloses that the drape may be provided with a plastic liner to provide resistance to fluids (col. 3, lines 51-55). Protective capes for use in during hair styling are conventionally made of an absorbent outer layer with a waterproof liner as the inner layer in order to prevent liquid from running down the surface of the cape due to the absorbency of the outer layer and to provide protection for the wearer by preventing liquids from soaking through the cape due to the waterproof liner. By constructing the cape of Paolacci out of such material, the shoulder panels, chest panels, and back panels would be formed of absorptive material as in claims 5-7, and the cape would include a fluid-resistant inner layer as in claim 4. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the cape of Paolacci out of material comprising an

outer layer of absorbent material having a liner of fluid-resistant material, such as disclosed by Daniel, in order to provide optimal protection for the wearer from liquids.

Response to Arguments

8. Applicant's arguments filed 8/4/05 have been fully considered but they are not persuasive.

With regard to the Beauchamp et al patent, applicant argues that Beauchamp discloses two embodiments, one of which is shown in Fig. 1 of Beauchamp and the other of which is shown in Fig. 3 of Beauchamp. This is incorrect, as both Fig. 1 and Fig. 3 of Beauchamp are illustrations of the same embodiment. Figs. 1-3 all illustrate the same cape embodiment. Fig. 3 merely shows the cape of Figs. 1-2 positioned on a wearer. Beauchamp does show a second embodiment in Fig. 4, however the examiner contends that Figs. 1-3 anticipate claims 1, 3, and 5-7, as fully set forth in the rejection above. Applicant argues that the cape as shown in Fig. 1 does not have sleeve panels. The examiner notes that the top or shoulder sections of the garment of Beauchamp are wider than the shoulders of the wearer, and the outermost portions of this shoulder region of the cape as shown in Fig. 1 folds down to cover the top portions of the wearer's arms, as clearly seen in Fig. 3; this portion which folds down over the arms forms a "sleeve panel" as claimed, and the portion of the cape which covers the wearer's shoulders forms the claimed shoulder panels (also see col. 2, lines 12-13 and col. 4, lines 14-16). The shoulder panels have lateral ends which integrally attach to the portion which forms the "sleeve panels". As stated in the rejection above, each

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shoulder panel has a medial end and a lateral end, and the lateral end of the shoulder panel overlies the outer edge of the wearer's shoulder proximate the lead line from reference numeral 18 as shown in Fig. 3 and is integrally attached to a sleeve panel, which is seen to extend downwards therefrom (see Fig. 3). Applicant argues that Fig. 3 does not show chest panels which terminate at their lateral ends, but rather form a continuous surface with the sleeve panels. Firstly, the examiner notes that the claims do not recite that the chest panels terminate at their lateral ends. Thus, applicant is arguing limitations which are not claimed. The claims merely recite chest panels which each have a medial and lateral side. The chest panels shown in Fig. 3 do have a medial and lateral side, even if the lateral side extends integrally into the sleeve panel. Moreover, the portion of the chest panel in the bottom third of the garment as shown in Fig. 3 does terminate at its lateral side. As shown in Fig. 3, the portion of the chest panel which is below the sleeve panel (i.e. at the position of the wearer's elbow and below) has a lateral side which includes a lateral edge, wherein the chest panel terminates at this lateral edge.

With regard to Paolacci, applicant notes that as shown in Fig. 1 of Paolacci, "the dotted lines down the center of the unitary chest panel denote 'conventional stitching' and not an opening". The examiner agrees and directs applicant's attention to the rejection set forth above and in the previous office action, in which it is noted that the pair of panels forming the claimed "chest panels" with a longitudinal opening therebetween are depicted in Fig. 2 of Paolacci (not in Fig. 1). The panel shown in Fig. 1 of Paolacci forms the claimed "back panel". As noted above, although Paolacci

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discloses that the two flaps shown in Fig. 2 are "rear flaps", the structure of the garment meets the claimed limitations in that the garment is capable of being worn with these flaps in the front. As set forth in the rejection above and in the previous office action, the garment of Paolacci has two panels (shown in Fig. 2) each having a medial and lateral side and depending from the shoulder panels as claimed. The recitation of the first claimed panel as being a "back" panel and the two opposing panels as being "chest" panels amounts to the intended use of the garment to the extent that these panels cover the back and chest of the wearer when worn with the opening at the front. To this extent, the garment of Paolacci has the claimed structure since it clearly is capable of being worn with the opening facing either the front or the back of the wearer. If the opening is worn facing the front of the wearer, the panels shown in Fig. 2 form chest panels and the panel of Fig. 1 forms a back panel as claimed. Additionally, when viewed from the direction as in Fig. 2 of Paolacci, the panel furthest from the viewer forms a back panel as claimed, and the two opposed front panels form chest panels to the extent claimed. Merely donning a garment in reverse (i.e. wearing a cape with the opening in the front rather than in the back) does not render a known structure patentable. The garment of Paolacci has the claimed structure, and is clearly capable of being worn in the manner claimed.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

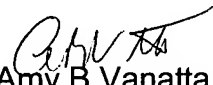
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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 571-272-4995. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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Amy B Vanatta
Primary Examiner
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